

REMARKS

Applicants reply within three months to the Office Action dated March 5, 2010. Claims 1 and 29-51 are pending in the application and the Examiner rejects claims 1 and 29-51. Applicants amend certain claims without prejudice or disclaimer. Support for the amendments may be found in the originally-filed specification, claims, and figures. For example, support, Applicants direct the Examiner to ¶¶ [00143], [00150], and [00157] for support in the specification for these amendments. Reconsideration of this application is respectfully requested.

Applicants thank the Examiner for the interview conducted on 4/19/2010. In the interview, the Examiner acknowledged that clarifying that the portable RF device has a sensor for detecting biometric data would define over the cited references. Applicants present amendments to the claims in accordance with the discussion in the interview and respectfully request withdrawal of all rejections of the claims.

In the Office Action, the Examiner rejects claims 30 and 51 under 35 U.S.C. § 112, second paragraph as being indefinite. Applicants submit amendments to these claims and respectfully request withdrawal of these rejections.

The Examiner rejects claims 1, 29-30, 39, and 41-50 under 35 U.S.C. § 103(a) as being unpatentable over Zacharias, U.S. Patent No. 6,494,367 (“Zacharias”) in view of Pare, Jr. et al., U.S. Patent No. 5,870,723 (“Pare”). Claim 31 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Zacharias in view of Pare, and further in view of Maritzen, et al., U.S. Patent Publication No. 2002/0073042 (“Maritzen”). Claims 32-34, 37-38 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zacharias in view of Pare, in further view of Maritzen and Walker, et al., U.S. Patent Publication No. 2005/0027650 (“Walker”). Claim 35 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Zacharias, U.S. Patent No. 6,494,367 (“Zacharias”), in view of Pare, Jr., et al., U.S. Patent No. 5,870,723 (“Pare”), in further view of Siegel, U.S. Patent No. 7,289,970 (“Siegel”). Claim 36 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Zacharias, in view of Pare, in further view of Maritzen, and Siegel. Claim 51 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Zacharias, in view of Pare, in further view of Maritzen and Walker.

Applicants respectfully disagree with these rejections, but present amendments to the claims in order to clarify the patentable aspects of the claims and to expedite prosecution. Furthermore, Applicants do not concede Zacharias, Maritzen, Walker, and Siegel are in fact prior art with respect to this application, and Applicants reserve the right to antedate Zacharias, Maritzen, Walker, and/or Siegel.

Initially, Applicants note that the Examiner takes “Official Notice that using [an] RF device [is] old and well known in the art to perform [a] transaction. Therefore it would have been obvious to substitute [an] RF device for the card to obtain [a] predictable result” (Office Action, page 4; see also page 10¹). Applicants respectfully traverse this Official Notice and request that the Examiner provide a reference that supports this assertion **as of the earliest priority date** of the present application — July 10, 2001 — where Applicants included disclosure relating to RF communications. Applicants submit that **as of the priority date**, it was not obvious to conduct the claimed transactions with an RF device.

Turning to the cited references, Zacharias discloses a “multi-application card for providing secure access to multiple card accounts. . . . The system also includes a translator that receives a transaction request including the identification number read from the multi-application card and one of the associated **indexes obtained from a source other than the card**” (Abstract; emphasis added). For example, a user may input an index through an ATM: “if the card used at the ATM is a Supracard, the Bankcard system would detect that the card used is a multi-application card. The user is prompted to enter the index pertaining to the selected Bankcard” (col. 6, lines 21-24).

Therefore, Zacharias does not disclose or contemplate, alone or in combination with the cited references, “A **portable** Radio Frequency (RF) payment device, comprising: a biometric sensor **configured to detect a biometric sample of a user of the portable RF payment device** . . . wherein the transaction value is configured to be assessed against the first account value **in response to the transaction biometric sample data being associated with the first biometric sample data**” as recited in claim 50 (emphasis added), and as similarly recited in claims 1, 48-49, and 51.

¹ Applicants traverse all instances where the Examiner takes Official Notice in the Office Action.


Furthermore, Pare discloses a “system for **tokenless** authorization of commercial transactions . . . [where] a buyer can conduct commercial transactions **without having to use any tokens**” (Abstract; emphasis added). Therefore, regardless of whether or not Pare discloses biometrics, Pare does not disclose or contemplate, alone or in combination with the cited references, and in fact **teaches against**: “A **portable** Radio Frequency (RF) payment device, comprising: a biometric sensor **configured to detect a biometric sample of a user of the portable RF payment device**” as recited in claim 50 (emphasis added), and as similarly recited in claims 1, 48-49, and 51. For at least these reasons, Applicants respectfully request withdrawal of the rejections of claims 1, 48-49, and 51.

Dependent claims 29-47 variously depend from claim 1 and are differentiated from the cited references for at least the same reasons for differentiating claim 1, in addition to their own respective features. Applicants therefore request withdrawal of the rejections of claims 29-47.

In view of the above remarks, Applicants respectfully request withdrawal of all pending rejections. The Examiner is invited to telephone the undersigned at the Examiner’s convenience, if that would help further prosecution of the subject application. The Commissioner is authorized to charge any fees due to Deposit Account No. 19-2814.

Respectfully submitted,

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